

Before the  
Administrative Hearing Commission  
State of Missouri

DEPARTMENT OF HEALTH &  
SENIOR SERVICES,

Petitioner,

vs.

MATTHEW A. THOLEN,

Respondent.

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No. 14-0280 DH

**DECISION**

We grant the motion of the Department of Health and Senior Services (“DHSS”) for summary decision in this matter and find that there is cause to discipline the license of Matt Tholen as an emergency medical technician-basic (“EMT-B”).

**Procedure**

DHSS filed a complaint on February 27, 2014 alleging there is cause to discipline Tholen’s license as an EMT-B. On March 8, 2014, Tholen was served with our notice of complaint/notice of hearing. Tholen did not file an answer to the complaint. On April 14, 2014, DHSS filed a motion for summary decision. We allowed Tholen until April 30, 2014 to respond, but he did not respond.

Pursuant to § 536.073.3,<sup>1</sup> and our Regulation 1 CSR 15-3.446(6),<sup>2</sup> we may decide this case without a hearing if DHSS establishes facts that Tholen does not dispute and entitle DHSS

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<sup>1</sup>RSMo 2000. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

<sup>2</sup>All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

to a favorable decision. The following facts, as established by the exhibits filed with DHSS' motion, are undisputed.

### **Findings of Fact**

1. Tholen was licensed as an EMT-B on February 25, 2013. His license has remained current and active since then and is scheduled to expire on February 28, 2018.

2. On December 12, 2012, Tholen was indicted in the United States District Court for the Western District of Missouri for the criminal offense of wire fraud.

3. The crime involved a systematic scheme for the submission of false information to health insurance provider Blue Cross and Blue Shield of Kansas City in order to defraud its wellness program of money.

4. Tholen pled guilty to the above offense on May 13, 2013 and on September 6, 2013 was sentenced to three years' probation and ordered to pay restitution in the amount of \$17,600.

### **Conclusions of Law**

We have jurisdiction over this case.<sup>3</sup> DHSS has the burden of proving that Tholen committed an act for which the law allows discipline.<sup>4</sup>

### **Cause for Discipline**

DHSS argues that there is cause to discipline Tholen's license under § 190.165.2(2), which states:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate, permit or license required by sections 190.100 to 190.245 or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to

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<sup>3</sup>Section 621.045.

<sup>4</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

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(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections 190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

DHSS further argues there is cause for discipline under 19 CSR 30-40.365(2), which provides that DHSS:

may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit or license required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

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(B) Being finally adjudicated and found guilty, or having entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

An essential element of a crime is one that must be proven for a conviction in every case.<sup>5</sup> The crime to which Tholen pled guilty was a violation of 18 U.S.C. § 1343, which states:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of

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<sup>5</sup>*State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App. K.C.D. 1961).

false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such a person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.<sup>6</sup> It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.<sup>7</sup> Violence is defined as “exertion of physical force so as to injure or abuse[.]”<sup>8</sup> The violation of 18 U.S.C. § 1343 does not require the exertion of physical force. Therefore, violence is not an essential element of this crime. However, the violation of 18 U.S.C. § 1343 does require a disposition to defraud, and therefore contains the essential elements of fraud and dishonesty.

Reasonable relation to the qualifications, functions, and duties of a profession is a low threshold. To relate is to have a logical connection.<sup>9</sup> As an EMT-B, Tholen is a health care provider whose services are routinely billed to insurance companies. Therefore, his attempt to defraud a health insurance provider has a logical connection with his profession as an EMT-B and the crime is reasonably related to the functions and duties of an EMT-B.

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty

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<sup>6</sup> *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

<sup>7</sup> MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

<sup>8</sup> *Id.* at 1396.

<sup>9</sup> *Id.* at 1050.

between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”<sup>10]</sup>

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,<sup>11</sup> a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:<sup>12</sup>

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The crime to which Tholen pled guilty, wire fraud, contains the essential element of fraud. Therefore, it is a Category 1 crime.<sup>13</sup>

Consequently, Tholen’s EMT-B license is subject to discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B) because the crime to which he pled guilty is reasonably related to the profession of an EMT-B, contains the essential element of dishonesty, contains the essential element of fraud, and is a crime involving moral turpitude.

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<sup>10</sup>*In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

<sup>11</sup>213 S.W.3d 720 (Mo. App., W.D. 2007).

<sup>12</sup>*Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

<sup>13</sup>See *In re Carpenter*, 891 A.2d 223 (D.C. 2006) (moral turpitude is inherent in crimes that have an intent to defraud or steal). See also *U.S. v. Morrow*, 2005 WL 3163801 (D.D.C. June 2, 2005) and *Johnson v. Commonwealth*, 581 S.E.2d 880 (41 Va. App., 2003) (misdemeanor crimes of moral turpitude are limited to those crimes involving lying, cheating, and stealing).

### **Summary**

Tholen is subject to discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on August 11, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner